

Passed by both Houses



New South Wales

Health Legislation Amendment Bill 2012

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2012*



New South Wales

Health Legislation Amendment Bill 2012

Act No , 2012

An Act to make miscellaneous amendments to various Acts that relate to health and associated matters.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Legislation Amendment Act 2012*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1.2 commences on a day to be appointed by proclamation.

Schedule 1 Amendments of Acts

1.1 Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

[1] Section 6A Adjudication body

Omit section 6A (d).

[2] Schedule 1 Modification of Health Practitioner Regulation National Law

Insert before Schedule 1 [1]:

[1A] Section 3A

Insert after section 3:

3A Objective and guiding principle [NSW]

In the exercise of functions under a NSW provision, the protection of the health and safety of the public must be the paramount consideration.

Note. This section is an additional New South Wales provision.

[3] Schedule 1 [3]

Omit “, Performance Review Panels and Impaired Registrants Panels” from the note.

Insert instead “and Performance Review Panels”.

[4] Schedule 1 [5A]

Insert after Schedule 1 [5]:

[5A] Section 5, definitions of “NSW provision” and “NSW regulation”

Insert in alphabetical order:

NSW provision means—

- (a) a provision that forms part of this Law because of a modification made by the *Health Practitioner Regulation (Adoption of National Law) Act 2009*; or
- (b) a NSW regulation.

Note. This definition is an additional New South Wales provision.

NSW regulation means a regulation made under section 247A.

Note. This definition is an additional New South Wales provision.

[5] Schedule 1 [13]

Omit “Department of Health” from the definition of *Director-General* in section 138 (1).

Insert instead “Ministry of Health”.

[6] Schedule 1 [13]

Omit the definitions of *NSW provision* and *NSW regulation* from section 138 (1).

[7] Schedule 1 [14A]

Insert after Schedule 1 [14]:

[14A] Section 143A

Insert after section 143:

143A Mandatory notifications [NSW]

A mandatory notification is taken to be a complaint both for the purposes of this Part and for the purposes of the *Health Care Complaints Act 1993* (including sections 96 and 98 of that Act).

Note. This section is an additional New South Wales provision.

[8] Schedule 1 [15]

Insert “(including, but not limited to, psychological counselling)” after “counselling” wherever occurring in sections 146B (1) (c), 148E (1) (d) and (2) (c), 149A (1) (c) and (2) (c) and 152I (2) (a).

[9] Schedule 1 [15]

Omit section 150 (7). Insert instead:

- (7) If a Council delegates any function of the Council under this section to a group of 2 or more persons, at least one of those persons must be a person who—
- (a) is not a registered health practitioner or student in the health profession for which the Council is established; and
 - (b) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.

[10] Schedule 1 [15]

Insert after section 159 (2):

- (3) The appeal is to be dealt with by reconsideration of the matter by the Tribunal and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the Council when it considered the matter, may be given.

[11] Schedule 1 [15]

Omit “Division 13” from section 161. Insert instead “Division 14A”.

[12] Schedule 1 [15]

Insert after section 163 (1) (a):

- (a1) if the Chairperson of the Tribunal decides, on application by the person the subject of the review or the Commission, that a Council is the appropriate review body, the Council; or

[13] Schedule 1 [15]

Insert after paragraph (b) of the definition of *decision-making entity* in section 163A (4):

- (b1) a Council, but only in relation to orders made under this Division or under Subdivision 5 of Division 3;

[14] Schedule 1 [15]

Omit section 163B (3). Insert instead:

- (3) A *reinstatement order* is an order that the person may be registered in accordance with Part 7 if—
 - (a) the person makes an application for registration to the National Board; and
 - (b) the relevant National Board decides to register the person.
- (3A) Any condition imposed on a person’s registration by the National Board under Part 7 applies but only to the extent that it is not inconsistent with conditions imposed or altered by the appropriate review body under subsection (4).

[15] Schedule 1 [15]

Omit section 167A (2) (c).

[16] Schedule 1 [15]

Omit section 169B (1) (c). Insert instead:

- (c) one person, appointed from among a panel of persons for the time being nominated by the Minister, who—
 - (i) is not a registered health practitioner or student in the same health profession as the relevant health practitioner the subject of the proceedings before the Committee; and
 - (ii) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.

[17] Schedule 1 [15]

Omit section 171 (4) (c).

[18] Schedule 1 [15]

Omit section 172B (1) (b). Insert instead:

- (b) one person, appointed from among a panel of persons for the time being nominated by the Minister, who—
 - (i) is not a registered health practitioner or student in the same health profession as the relevant health practitioner the subject of the proceedings before the Committee; and
 - (ii) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.

[19] Schedule 1 [15]

Omit section 174A (2) (b). Insert instead:

- (b) one is to be a person who—
 - (i) is not a registered health practitioner or student in the same health profession as the health practitioner to whom the proceedings relate; and
 - (ii) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.

[20] Schedule 1 [18]

Omit “provision.” from section 244A (e). Insert instead:
provision;

- (f) on a stated day before 1 July 2010, or during a stated period before 1 July 2010, a stated person was or was not registered as a health practitioner or a student under a repealed Act;
- (g) on a stated day before 1 July 2010, or during a stated period before 1 July 2010, a registration under a repealed Act was or was not subject to a stated condition;
- (h) on a stated day before 1 July 2010, a registration under a repealed Act was suspended or cancelled or otherwise ceased to have effect (whether or not for a specified period).

[21] Schedule 1 [18]

Insert at the end of section 244A:

- (2) In this section—
registration under a repealed Act includes any other form of authorisation, for example, a practising certificate, endorsement, or the like.
repealed Act means an Act that was repealed by the *Health Practitioner Regulation Amendment Act 2010*.

[22] Schedule 1 [19]

Omit “Department of Health” from section 247A (2) (e).
Insert instead “Ministry of Health”.

[23] Schedule 1 [24A]

Insert after Schedule 1 [24]:

[24A] Schedule 5 Investigators

Omit “(section 163)”.

[24] Schedule 1 [25]

Insert at the end of clause 1 (1) of Schedule 5A:
the Health Legislation Amendment Act 2012

[25] Schedule 1 [25]

Insert after Part 3 of Schedule 5A:

**Part 4 Provisions consequent on enactment of
Health Legislation Amendment Act 2012
[NSW]**

30 Definition [NSW]

In this Part:

amending Act means the *Health Legislation Amendment Act 2012*.

31 Mandatory notifications [NSW]

Section 143A as inserted by the amending Act does not extend to a notification under Division 2 of Part 8 that was made before the commencement of that section.

32 Suspension or conditions of registration to protect public [NSW]

Section 150 (7) as substituted by the amending Act does not apply to a delegation made by a Council before that substitution.

33 Membership of Committees [NSW]

- (1) The substitution of section 169B (1) (c) by the amending Act does not affect any Committee that was established before that substitution.
- (2) The substitution of section 172B (1) (b) by the amending Act does not affect any Committee that was established before that substitution.

34 Membership of Performance Review Panels [NSW]

The substitution of section 174A (2) (b) by the amending Act does not affect any Performance Review Panel that was established before that substitution.

[26] Schedule 1 [25]

Insert after clause 2 (2) of Schedule 5B:

- (2A) The notice referred to in subclause (2) (b) may be given by the assessor or by another person on behalf of the assessor.

[27] Schedule 1 [25]

Omit “Department of Health” wherever occurring in Schedules 5C and 5D.
Insert instead “Ministry of Health”.

1.2 Health Records and Information Privacy Act 2002 No 71

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

genetic information means health information of a type described in section 6 (d).

genetic relative means a person who is related to an individual by blood, for example, a sibling, parent or descendant of the individual.

[2] Section 6 Definition of “health information”

Omit “any sibling, relative or descendant” from section 6 (d).
Insert instead “a genetic relative”.

[3] Schedule 1 Health Privacy Principles

Insert after clause 10 (1) (c):

(c1) **Genetic information**

the information is genetic information and the use of the information for the secondary purpose:

- (i) is reasonably believed by the organisation to be necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of a genetic relative of the individual to whom the genetic information relates, and
- (ii) is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or

[4] Schedule 1, clause 11 (1) (c1)

Insert after clause 11 (1) (c):

(c1) **Genetic information**

the information is genetic information and the disclosure of the information for the secondary purpose:

- (i) is to a genetic relative of the individual to whom the genetic information relates, and

- (ii) is reasonably believed by the organisation to be necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of a genetic relative of the individual to whom the genetic information relates, and
- (iii) is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or

1.3 Poisons and Therapeutic Goods Act 1966 No 31

[1] Section 8 Poisons List

Insert “, podiatrist authorised to prescribe the substance under section 17C” after “section 17B” in section 8 (2).

[2] Section 10 Prohibition on supply of certain substances otherwise than by wholesale

Insert after section 10 (2) (a3):

- (a4) by a podiatrist, who is authorised under section 17C to supply the substance, in the lawful practice of his or her profession as such, or

[3] Section 10 (4) (a4)

Insert after section 10 (4) (a3):

- (a4) by a podiatrist, who is authorised under section 17C to supply the substance, in the lawful practice of his or her profession as such, or

[4] Sections 10 (4) (b), 16 (1) (b) and (d1), (2), (3) (a) (i) and (5), 17 (1) (j1), 18A (1) (b) and 34 (4)

Insert “, podiatrist” after “optometrist” wherever occurring.

[5] Section 11 Restriction on wholesale supply of certain substances

Insert after section 11 (2) (a3):

- (a4) a podiatrist authorised under section 17C to supply or use, or have possession of, the substance concerned, or

[6] Section 12 Obtaining substances by false representation

Insert after section 12 (2) (a3):

- (a4) a podiatrist authorised under section 17C to supply or use, or have possession of, the substance concerned, or

[7] Section 16 Offences relating to prescribed restricted substances

Insert after section 16 (1) (a3):

- (a4) the person is a podiatrist who is authorised under section 17C to possess the substance and the person obtains possession or attempts to obtain possession of it in the lawful practice of his or her profession,

[8] Section 36AA Medicines to be dispensed by pharmacists

Insert “a podiatrist,” after “an optometrist,” wherever occurring.